

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 04-0220P

**Withholding Tax
For the Calendar Year 2003**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late payment of a calendar year withholding tax return for the year 2003.

The taxpayer is an out-of-state company.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the late penalty be abated as the taxpayer did not have the information needed to pay the tax by the due date.

The taxpayer sold an Indiana property during the 2003 year. The taxpayer completed an IRS Section 1031 Exchange in early March 2004 for the property sold in 2003. The 1031 computation resulted in the taxpayer not having the information available to compute the annual withholding until late March 2004, where upon, the taxpayer filed and paid the 2003 withholding three weeks past the due date.

The Department points out the taxpayer could have paid an estimate at the March 15th due date and then applied for a refund when the withholding return was filed.

45 IAC 15-11-2(b) states, “Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.